International Seabed Authority ISBA/21/C/3

Council

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Procedures and criteria for the extension of an approved plan of work for exploration pursuant to section 1, paragraph 9, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

Note by the Secretariat

1. During the twentieth session of the International Seabed Authority in 2014, the Legal and Technical Commission of the Authority drew to the attention of the Council the fact that seven contracts (see annex I) for exploration for polymetallic nodules would expire in 2016 and 2017.[1] Since the first applications for extension could be anticipated by September 2015, there was an urgent need to adopt appropriate procedures and criteria for processing such applications in a uniform and non-discriminatory manner. Recognizing the concerns expressed and the urgent need to address them, the Council, in its decision ISBA/20/C/31 of 23 July 2014, requested the Commission, as a matter of urgency and as its first priority, to formulate draft procedures and criteria for applications for extensions of contracts for exploration in accordance with section 3.2 of the standard clauses contained in annex IV to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area, to be submitted to the Council at its twenty-first session. In the same decision, the Council also emphasized that such draft procedures and criteria should be made available to members of the Council well in advance of its session in July 2015, given that the first applications for extension could be anticipated by September 2015.

[1] The contracts in question are between the Authority and Interoceanmetal Joint Organization, Yuzhmorgeologiya, the Government of the Republic of Korea, China Ocean Mineral Resources Research and Development Association, Deep Ocean Resources Development Co. Ltd., Institut français de recherche pour l'exploitation de la mer and the Government of India. Annex I to the present document shows the status of each of the contracts, the date of their entry into force and date of expiry, and the latest date on which an application for extension could be submitted under section 3.2 of the standard clauses for exploration contracts, contained in annex IV to the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area.

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2. At its session in February 2015, in response to the request from the Council, the Commission considered and adopted a recommendation to the Council regarding such procedures and criteria, having before it draft procedures and criteria (ISBA/21/LTC/WP.1) and an explanatory note (ISBA/21/LTC/3) prepared by the Secretariat. The Commission considered the draft procedures and criteria in closed meetings on 23, 24, 25 and 27 February 2015. On the latter date, after having exhausted efforts to reach a decision by consensus, the Commission decided to proceed to a vote under rules 44 and 47 of its rules of procedure. The Commission adopted its recommendation to the Council on procedures and criteria for the extension of an approved plan of work for exploration, as contained in document ISBA/21/C/WP.1, by 9 votes to 3, with 2 abstentions. The three members of the Commission who voted against adoption requested that the recommendation be accompanied by a summary of their divergences of opinion, in accordance with rule 46 of the rules of procedure of the Commission. The summary, as submitted to the Secretariat, appears in annex II to the present document.

3. The draft procedures and criteria for the extension of an approved plan of work for exploration describe the form and content of an application for extension, and the procedures and criteria for the processing of such applications by the Secretariat and their consideration by the Commission and the Council. The draft includes a transitional provision to address the situation in which an application has been duly submitted but the contract would expire on a date following the meetings of the Commission at which the application is considered but before the next meeting of the Council. The draft procedures and criteria also contain two annexes. Annex I details the content of an application for extension and annex II contains a template for an agreement in writing between the Authority and the contractor concerning the extension of the contract for exploration.

4. In adopting its recommendation to the Council, the Commission also noted that the issue of the amount of the administrative fee for processing an application for extension of an approved plan of work for exploration (ISBA/21/C/WP.1, paras. 4-6) was a matter within the mandate of the Finance Committee since, pursuant to the Agreement, any decision by the Council having financial and budgetary implications or pertaining to the financial management and internal financial administration of the Authority must be based on the recommendations of the Committee. The Commission therefore requested the Secretary-General to refer the matter to the Finance Committee for consideration at its next meeting, in July 2015. Accordingly, the matter will be placed on the provisional agenda of the meeting.

5. The Council is invited to consider, with a view to adopting, the draft procedures and criteria for the extension of an approved plan of work for exploration as recommended by the Commission and contained in document ISBA/21/C/WP.1.

6. In terms of the form in which the procedures and criteria are to be adopted, it is suggested that the Council use its general supervisory powers under article 162, subparagraphs 2 (a) and (l), of the United Nations Convention on the Law of the Sea, to give effect to the procedures and criteria in the form of a decision. A draft decision for consideration by the Council is contained in annex III to the present document.

Annex I

Contracts for exploration due to expire between March 2016 and March 2017

Contractor	*Sponsoring State or States*	*Date of entry into force*	*Date of expiry*	*Latest date for application for extension (not later than six months before the date of expiry)*
Interoceanmetal Joint Organization	Bulgaria, Cuba, Czech Republic, Poland, Russian Federation and Slovakia	29 March 2001	28 March 2016	28 September 2015
Yuzhmorgeologiya	Russian Federation	29 March 2001	28 March 2016	28 September 2015
Government of the Republic of Korea		27 April 2001	26 April 2016	26 October 2015
China Ocean Mineral Resources Research and Development Association	China	22 May 2001	21 May 2016	21 November 2015
Deep Ocean Resources Development Co. Ltd.	Japan	20 June 2001	19 June 2016	19 December 2015
Institut français de recherche pour l'exploitation de la mer	France	20 June 2001	19 June 2016	19 December 2015
Government of India		25 March 2002	24 March 2017	24 September 2016

Annex II

Summary of divergences of opinion submitted by three members of the Legal and Technical Commission, in accordance with rule 46 of the rules of procedure of the Commission

Some members of the Legal and Technical Commission expressed a divergent opinion as to the task and responsibility of the Commission as set forth under section III of the recommendation for the following reasons:

A. Regulation 26 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (hereinafter, the Regulations) provides that:

> **Duration of contracts**
>
> 1. A plan of work for exploration shall be approved for a period of 15 years. Upon expiration of a plan of work for exploration, the contractor shall apply for a plan of work for exploitation unless the contractor has already done so, has obtained an extension for the plan of work for exploration or decides to renounce its rights in the area covered by the plan of work for exploration.
>
> 2. Not later than six months before the expiration of a plan of work for exploration, a contractor may apply for extensions for the plan of work for exploration for periods of not more than five years each. Such extensions shall be approved by the Council, on the recommendation of the Commission, if the contractor has made efforts in good faith to comply with the requirements of the plan of work but for reasons beyond the contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

As expressly stated in regulation 26.2, the assessment of efforts made by those contractors in good faith "to comply with the requirements of the plan of work" logically and necessarily require a prior assessment by the Legal and Technical Commission in order to ascertain the extent of compliance of the contractor with the requirements of the plan of work.

B. Along those same lines, section 3.2 of annex IV (Standard clauses for exploration contract) of the Regulations provides, in a more comprehensive way, as follows:

> 3.2 Upon application by the Contractor, not later than six months before the expiration of this contract, this contract may be extended for periods of not more than five years each on such terms and conditions as the Authority and the Contractor may then agree in accordance with the Regulations. Such extensions shall be approved if the Contractor has made efforts in good faith to comply with the requirements of this contract but for reasons beyond the Contractor's control has been unable to complete the necessary preparatory work for proceeding to the exploitation stage or if the prevailing economic circumstances do not justify proceeding to the exploitation stage.

Once again, it is stated that such extensions shall be approved "if the Contractor has made efforts in good faith to comply with the requirements of this contract".

A similar prior assessment regarding the extent of the compliance with the requirements of the contract is in consequence (and logically, as well) required. More specifically, there are concrete requirements established in, inter alia, sections 4, 5 and 10 of the standard clauses. Sections 4, 5 and 10 specifically refer to the reporting obligations of the contractor. The call for contractors to improve their reporting is an issue regularly brought to the attention of the Council by the Legal and Technical Commission.

In developing the new procedure for the extension of contracts it is important to recall the contractors' obligation to carry out exploration in good faith and in accordance with the terms and conditions of the contract, the Convention and the Agreement, the rules, regulations and procedures of the Authority and the decisions of the relevant organs of the Authority. This obligation is established under section 13.2 of annex IV (Standard clauses for exploration contract) of the Regulations:

13.2 The Contractor undertakes:

(a) To accept as enforceable and comply with the terms of this contract;

(b) To comply with the applicable obligations created by the provisions of the Convention, the rules, regulations and procedures of the Authority and the decisions of the relevant organs of the Authority;

(c) To accept control by the Authority of activities in the Area as authorized by the Convention;

(d) To fulfil its obligations under this contract in good faith;

...

C. The Legal and Technical Commission is the competent organ of the Council (cf. e.g., article 165 of the Convention and section 1 (4) of the annex to the Agreement) to consider and assess compliance with the requirements of the contract (i.e., the plan of work), since regulation 26.2 of the Regulations expressly provides that "such extensions shall be approved by the Council, on the recommendation of the Commission".

Although this particular function of the Legal and Technical Commission could be implied from paragraphs 9 and 12 of the proposed procedures, no explicit mention regarding this task of the Commission is included in section III of the recommended new procedures.

In conclusion, some members of the Commission consider it necessary to include in section III of the recommended procedures an explicit reference to this function of the Commission. These members of the Commission note that, in the light of the aforementioned references to the Convention and Regulations (cf. section A through C), it is fundamental that the Commission fulfils this explicit task.

Indeed, it would seem that in the adoption by the Authority of rules, regulations and procedures for the conduct of activities in the Area as they progress, it is important to formulate clear and precise language in the recommended procedures as well as in the rules, regulations and procedures that are being or will be developed. This with the purpose of avoiding, as far as practicable, any possible ambiguity and misinterpretation of the Convention, the Agreement, the rules, Regulations, procedures and contracts.

Annex III

Draft decision of the Council of the International Seabed Authority relating to the procedures and criteria for the extension of an approved plan of work for exploration pursuant to section 1, paragraph 9, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982

The Council of the International Seabed Authority,

Recalling that, pursuant to article 162, subparagraphs 2 (a) and (l), of the United Nations Convention on the Law of the Sea, the Council shall supervise and coordinate the implementation of the provisions of Part XI of the Convention on all questions and matters within the competence of the Authority and shall exercise control over activities in the Area in accordance with article 153, paragraph 4, of the Convention and the rules, regulations and procedures of the Authority,

Recalling also paragraph 2 of its decision ISBA/20/C/31 of 23 July 2014, in which the Council requested the Legal and Technical Commission, as a matter of urgency and as its first priority, to formulate draft procedures and criteria for applications for extensions of contracts for exploration, in accordance with section 3.2 of the standard clauses contained in annex IV to the Regulations, for consideration by the Council at its twenty-first session,

Taking into account the recommendations of the Legal and Technical Commission, as contained in document ISBA/21/C/WP.1, and the recommendations of the Finance Committee,

1. *Adopts* the procedures and criteria for extension of an approved plan of work for exploration pursuant to section 1, paragraph 9, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, as contained in the annex to the present decision;

2. *Requests* the Secretary-General to communicate the present decision to all contractors with the Authority.

International Seabed Authority ISBA/21/C/4

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7 May 2015

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Election to fill a vacancy on the Legal and Technical Commission in accordance with article 163, paragraph 7, of the United Nations Convention on the Law of the Sea of 10 December 1982

Note by the Secretary-General

1. The Council of the International Seabed Authority is invited to note that Emmanuel Kalngui (Cameroon), member of the Legal and Technical Commission, resigned on 2 April 2015. Mr. Kalngui had been re-elected as a member of the Commission on 21 July 2011 (see ISBA/17/C/21, para. 18), for a term of five years beginning 1 January 2012.

2. In accordance with article 163, paragraph 7, of the United Nations Convention on the Law of the Sea of 10 December 1982 and rule 80, paragraph 3, of the rules of procedure of the Council, in the event of the death, incapacity or resignation of a member of the Commission prior to the expiration of the term of office, the Council shall elect for the remainder of the term a member from the same geographical region or area of interest.

3. Article 163, paragraph 3, of the Convention and rule 81 of the rules of procedure of the Council provide that members of the Commission shall have appropriate qualifications in the area of competence of the Commission and that States parties shall nominate candidates of the highest standards of competence and integrity with qualifications in relevant fields so as to ensure the effective exercise of the functions of the Commission.

4. By a note verbale dated 13 April 2015, the Permanent Missions of Cameroon to the United Nations and to the International Seabed Authority informed the secretariat of the Authority of the nomination of the Director of Geology in the Ministry of Mines, Industry and Technological Development of the Government of Cameroon, Théophile Ndougsa Mbarga, as a candidate to fill the vacant seat on the Commission. The curriculum vitae of Mr. Ndougsa Mbarga is contained in the annex to the present note.

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Annex

Curriculum vitae of Théophile Ndougsa Mbarga (Cameroon)*

[Original: French]

Mr. Théophile Ndougsa Mbarga holds a doctoral degree in exploration geophysics and is a high-ranking professor at the level of senior lecturer (*maître de conférences*) in the public university system (University of Yaoundé I). He also holds several professional diplomas in mining engineering, oil and gas exploitation management and mining and petroleum contract negotiations.

On the basis of this profile and his many publications (more than 20 in international journals) as an academic in the field of geosciences applied to mining and petroleum research, Mr. Ndougsa Mbarga has been appointed to government posts with responsibility for geology, mining and hydrocarbons. He has served as Assistant Director of Geology (from 8 September 2005 to 12 February 2013), Director a.i. of Mining and Geology (from 14 July to 16 September 2011) and Director of Geology (from 27 February 2013 to the present). He also currently serves as the representative of Cameroon in the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, which meets annually in Geneva under the auspices of the United Nations Conference on Trade and Development.

Over the past 10 years, Mr. Ndougsa Mbarga has participated actively in:

(1) Negotiations on mining agreements for diamond, iron and bauxite projects in Cameroon. In some cases, such as the negotiations on the bauxite mining agreement, he served for one year as head of the negotiating committee;

(2) Audits concerning the evaluation of mineral resources and reserves in several mining projects under way in Cameroon, carried out in accordance with the Committee for Mineral Reserves International Reporting Standards template, which draws on the guidelines of the Canadian, South African, Australian, American, Chilean and European codes on modalities for the estimation and reporting of mineral resources and reserves;

(3) Supervision of transactions between small mining companies operating at the national level and the giants of the international mining industry;

(4) Advance technical missions to evaluate the oil and gas exploration and production activities of certain oil companies (Sterling Oil & Gas Limited, Murphy Cameroon Ntem Oil) prior to their entry into the Cameroonian oil sector.

It should also be noted that, with respect to the prevention of natural risks, he served as technical coordinator of the implementation of activities under the agreement between the French Government's Priority Solidarity Fund, the European Union and Cameroon on risk monitoring around Mount Cameroon from October 2005 to May 2007, for the purpose of managing natural risks and protecting the local population.

* Curricula vitae are issued without formal editing.

All of his ongoing coordination, follow-up and evaluation activities have kept him abreast of the technical environment of international legal issues in general and issues pertaining to the international law governing mining and petroleum operations in particular.

Thus, his technical qualifications and proven experience in monitoring and evaluating mining and hydrocarbon exploration, exploitation and development activities form the foundation for his nomination by Cameroon as a member of the Legal and Technical Commission of the International Seabed Authority.